

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between EnviroProtect, LLC ("EnviroProtect") and Daiso California, LLC ("Daiso"), with Daiso and EnviroProtect each individually referred to as a "Party" and collectively as the "Parties."

#### **1.2 Introduction and General Allegations.**

1.2.1 EnviroProtect is a company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 Daiso employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2.3 EnviroProtect alleges that Daiso imported, sold, and/or distributed for sale in California, products containing lead, a listed chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its products, which EnviroProtect alleged leached lead.

#### **1.3 Product Description.**

The product covered by this Settlement Agreement are the American Mug and Blue Glass Cup, which were imported, sold and/or distributed for sale in California by Daiso and/or other retailers with UPC Nos. 4549131531220 and 4549131080681 ("Covered Products").

#### **1.4 60 Day Notice of Violation and Exchange of Information.**

On September 29, 2017, EnviroProtect served Daiso, Daiso Holding, USA, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging

that Daiso had violated Proposition 65. The Notice alleged that Daiso had failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from its import, sale and/or distribution of the Covered Products.

EnviroProtect subsequently provided Daiso with test results in EnviroProtect's possession concerning its allegations. Daiso provided EnviroProtect with sales data related to the Covered Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute"). Specifically, EnviroProtect alleges that Daiso imported, sold or distributed for sale in the state of California the Covered Products, which contained and leached lead from the lip and rim area and the interior of the mug without first providing the clear and reasonable exposure warning required by Proposition 65. Daiso denies that such a warning is required under Proposition 65 or any otherwise applicable law.

Daiso further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Daiso of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Daiso of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Daiso. However, this section shall not diminish or otherwise affect Daiso's obligations, responsibilities, and duties hereunder.

#### **1.6 Effective Date.**


For purposes of this Settlement Agreement, the term "Effective Date" shall be the date upon which a complete and fully executed copy of the Settlement Agreement is delivered to each Party's counsel or the later of the two days if they are not the same.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

**2.1 Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to lead if they meet the standard of "Reformulated Products." "Reformulated Products" shall mean that they comply with the standards set forth in the *Brimer v. The Boelter Companies*, San Francisco Superior Court, Case No. CGC-05-440811 Consent Judgment ("Boelter CJ").

**2.2 Warning Option.** Covered Products that do not meet the Boelter CJ standards set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that Daiso sells or ships to consumers, retailers, or distributors located in California after the Effective Date. No Proposition 65 warning for lead shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

**2.3 Warning Language.** Where required to meet the criteria set forth in Section 2.2, Daiso shall provide the following warning statement in the following circumstances. When sold or distributed directly to a California end user consumer, or when Daiso distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, Daiso shall provide the following warning statement conspicuously on the unit packaging:

** WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

- The warning shall be preceded by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline or where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

## **3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE§ 25249.7(b)**

Daiso shall pay a civil penalty of \$1,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to EnviroProtect. Daiso shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$750, representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for EnviroProtect, LLC.," in the amount of \$250, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to EnviroProtect, who shall furnish a W-9 at least five days prior to the due date for payment. The two checks shall totaling \$1,000 shall be sent on or before February 15, 2018 to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
222 N. Sepulveda, Blvd. Suite 2222  
El Segundo, CA 90245

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that EnviroProtect and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to EnviroProtect and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, Daiso shall pay the total amount of \$13,000 for fees and costs incurred by EnviroProtect as a result of investigating, bringing this matter to the attention of Daiso, and negotiating a settlement. Daiso shall make the check payable to "Kawahito Law Group APC" and shall deliver payment on the following schedule. Daiso shall make a payment of \$7,000 on or before February 15, 2018. Thereafter, Daiso shall make three payments of \$2,000 each on March 15, 2018, April 15, 2018, and May 15, 2018 for a total payment of \$13,000. All payments shall be made to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
Attn. EnviroProtect v. Daiso  
222 North Sepulveda Blvd., Suite 2222  
El Segundo, CA 90245

Or by wire transfer to the following account:

Kawahito Law Group APC  
Client Trust Account  
Account Number: 3250 8882 4857  
Routing Number: 122000661/121000358 (paper/electronic transfer); 026009593 (wire)  
Bank of America  
4754 Admiralty Way  
Marina Del Rey, CA 90292

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

This Settlement Agreement is a full, final and binding resolution between EnviroProtect, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees ("Releasors"), on the one hand, and Daiso, Daiso Holding USA, Inc. and their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, and each entity to whom and/or Daiso directly or indirectly distributes or sells the Covered Products, including but not limited to Daiso's distributors, retailers, wholesalers, customers, marketplace hosts, and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been asserted by EnviroProtect against Daiso based on the alleged failure to warn about alleged exposures to lead contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Daiso (either directly or through any of the Releasees) in California before the Effective Date. This release is provided in EnviroProtect's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EnviroProtect on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,

obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- arising with respect to Daiso's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

## **5.2 Daiso's Release of EnviroProtect.**

Daiso on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against EnviroProtect, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by EnviroProtect and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

## **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

## **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

## **8. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Daiso:	Steven G. Teraoka
	Teraoka & Partners LLP
	One Embarcadero Center
	Suite 1020
	San Francisco, CA 94111

For EnviroProtect:

James K. Kawahito  
Kawahito Law Group APC  
Attn. EnviroProtect v. Daiso  
222 North Sepulveda Blvd., Suite 2222  
El Segundo, CA 90245

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

EnviroProtect and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

[Signatures on Following Page.]

**AGREED TO:**

Date: 2/2/18

By: Emilio Zelaya  
EnviroProtect, LLC

**AGREED TO:**

Date: 3/7/2018

Printed Name: YOSHIMIDE MURATA

By: [Signature]  
Authorized Officer of Daiso California, LLC